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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,049	10/10/2000	David C Alsop	UPN-3617	7690

7590 11/06/2003

Joseph R Condo
Woodcock Washburn Kurtz
Mackiewicz & Norris
One Liberty Place 46th Floor
Philadelphia, PA 19103

EXAMINER

LIN, JEYUHU

ART UNIT	PAPER NUMBER
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3737

DATE MAILED: 11/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/673,049

Applicant(s)

ALSOP, DAVID C

Examiner

Jeoyuh Lin

Art Unit

3737

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 5-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 9 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Entry of Amendment

1. Applicant's amendment, filed on August 1, 2003, as paper No. 9, is acknowledged. Claims 1 and 5-21 are currently pending.

Double Patenting

2. Claims 1, 9, 14, and 20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/121,963. Although the conflicting claims are not identical, they are not patentably distinct from each other because the distinguishing features of both the '963 and the instant '049 application teach the step of "applying amplitude-modulated RF irradiation in determining perfusion, the language of '963 being broader than that of the '049.

More specifically, claim 1 of '963 summarily teaches:

- a) applying a amplitude-modified magnetic field gradient and rf irradiation to acquire first data set.
- b) applying a second RF irradiation to acquire a second data set, and
- c) generating a compensated fluid flow data, wherein the said flow data is a function of at least the first and second data.

For the '049 application, claims 1, 9, 14, and 20 teach:

- a) Applying a constant rf irradiation with a magnetic field gradient, and acquire a first image of sample.

b) applying amplitude modulated RF irradiation with a magnetic field signal to generate second image.

c) generating a difference image signal from the two prior image signals to create a blood flow image.

Comparing the language of the two applications for the claims cited, the steps of applying the amplitude-modulated rf radiation and subsequent image data are reversed in sequence, with step a) in '963 analogous to step b) of '049 (wherein applying a constant rf radiation would read in to the broader '963 claim of "applying RF radiation"). Citing the Foo reference, (US 6,493,569), it is well known that step a) from the '049 application, interpretable as the "masking step", may be done before or after the primary image acquisition image known as step b) from the said application. (Column 3, lines 49-65)

As to step '049 c), generating a difference image to produce a arterial perfusion image reads on '963 c).

It is noted that '963 does not teach a waiting a transit delay period, or determining a transit delay period. However, it is well known in the art to wait until the contrast agent arrives to the targeted area before image acquiring.

For the above reasons, a double patenting rejection is valid.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

3. Claim 5-8, 10-13, 15-19, and 21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

4. Applicant's arguments with respect to claims 1, and 5-21 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeoyuh Lin whose telephone number is (703) 306-5990. The examiner can normally be reached on m-f, 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dennis Ruhl can be reached on (703) 308-2262. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

JYL

JYL
October 31, 2003


DENNIS W. RUHL
SUPERVISORY PATENT EXAMINER